

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1880.—Ordered to be printed.

Mr. HEREFORD, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1276.]

The Committee on Claims, to whom was referred the bill (S. 1276) for the relief of Charles B. Phillips, report as follows:

There have heretofore been two reports upon this claim and to the same effect.

The first, in 1875, submitted on the part of the committee by Senator Scott; the latter, in 1876, by Senator Mitchell. They both state the facts correctly. The latter report is as follows:

[S. Report No. 252, Forty-fourth Congress, first session.]

Mr. MITCHELL submitted the following report, to accompany bill S. 720:

The Committee on Claims, to whom was referred the petition of Charles B. Phillips, praying to be allowed a moiety of the value of the one-third part of the wharf-boat D. G. Fowler, forfeited to the United States under the act of Congress of August 6, 1831, having had the same under consideration, beg leave to submit the following report:

On the 6th day of August, A. D. 1861, Congress passed an act entitled "An act to confiscate property used for insurrectionary purposes."

After describing what acts shall, under certain specified circumstances, constitute any property to be lawful subject of prize and capture wherever found, the second section provides as follows: "That such prizes and capture shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized or into which they may be taken and proceedings first instituted."

The third section of the act is in these words:

"That the Attorney-General, or any district attorney of the United States in which said property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States. Or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts."

The record of the United States district court for the southern district of Illinois, dated March 2, 1863, a certified copy of which accompanies the petition, establishes the following facts:

1. That the wharf-boat D. G. Fowler was, on the information of claimant that she was being used for insurrectionary purposes, seized by the United States marshal of that district on July 5, 1862, and that the libel stating these facts was filed in said court on July 7, 1862, on behalf of the United States as well as of the claimant, and in that proceeding the informer was Charles B. Phillips.

2. That due proceedings were afterward had on such seizure, which resulted in the release by said court of two undivided thirds of said vessel, and a decree of forfeiture of the remaining one-third, belonging to D. G. Fowler, and an order of sale and for the payment of the proceeds into court was, as appears from the record, duly made. This decree was made March 2, 1863. Prior to the date of this decree of release as to the two-thirds interest and forfeiture as to the remaining third, several parties appeared and made claim to separate interests in said boat, and the court found that the claimants David Watts, Dickson A. Given, and Henry F. Given, under the style of

Watts, Given & Co., and Adam D. Stewart, were the owners of an undivided two-thirds part of the said wharf-boat, and that they had not forfeited their right of ownership therein; and no person appearing to claim the remaining one-third interest, it was ordered by the court that such interest be condemned as forfeited to the United States. This interest was owned by D. G. Fowler.

3. That, although said decree authorized a sale of said undivided one-third interest and the payment of the proceeds into court, no sale ever took place, the exigencies of the war requiring the appropriation and use of the vessel by the United States Government. In fact, the boat was in the possession and use of the Quartermaster's Department prior to the seizure and at the date of the decree. The boat was taken for the service of the United States Government September 6, 1861, as stated in the report of M. C. Meigs, Quartermaster-General, of date July 4, 1864, "*without valuation or understanding as to the rate of hire.*"

The interests of Watts, Given & Co. and of Adam D. Stewart having been purchased by the government, and the one-third interest deemed forfeited never having been sold, and, consequently, no proceeds as the result of the forfeiture having ever gone into the Treasury, and the Treasury Department having decided adverse to claimant's application, he now insists that he, as informer in the proceedings of forfeiture, is entitled, under the third section of the act above cited, to the one-half of the *value* of the one-third interest in said boat in reference to which there was decree of forfeiture, and by virtue of which the ownership of such interest vested in the United States.

This committee, in considering and reporting upon this case in the Forty-third Congress, came to the following conclusion (see Senate Report No. 614), which is now adopted:

"In view of the fact that the proceedings in court were not pursued to a conclusion, and that, under the act, an informer was not entitled to a share in the proceeds of confiscated property unless the money realized therefrom did reach the Treasury, your committee are inclined to sustain the decision of the Treasury Department; but, taking into consideration all the facts in this case, they think claimant is entitled to something, and have agreed in naming \$1,000 as the amount."

Although your committee hold that claimant is not, as a matter of legal right under the statute, entitled to the value of the one-half of the one-third interest decree forfeited, it is their opinion that it would be equitable, under the circumstances, in fixing the amount, to accept the rule prescribed by the statute. We will, therefore, inquire as to the value of this undivided one-third interest at the date of forfeiture.

The claimant insists that the value of the whole boat was \$15,000, or rather that this was the estimate placed upon it by the government in the purchase of the two-thirds interest by the Quartermaster's Department from Watts, Given & Co. and Adam D. Stewart, respectively; that the condemned one-third interest was of the value of \$5,000, and that therefore he, the claimant, is entitled to \$2,500.

This branch of the case requires consideration, and it is not entirely free from embarrassment. It appears from the records in evidence that the wharf-boat in controversy was seized by the Quartermaster's Department September 6, 1861, while lying at the wharf at Paducah, Ky., where it was used as a wharf-boat.

Watts, Given & Co., in their answer to the libel, wherein they make claim of property and aver their loyalty, allege as follows:

"That on the 12th day of January, 1862, Capt. W. J. Kountz, assistant quartermaster United States at Cairo, in said district, gave Capt. M. K. Byrne an order upon Watts, Given & Co., these respondents, to deliver up said boat to be carried to Cairo for United States purposes; that the said boat was so delivered to Captain Byrne by Watts, Given & Co.; that said Byrne then took charge of the same, and receipted to said Watts, Given & Co. therefor, and the said Captain Kountz afterward granted a certificate that said boat was so received from the said Watts, Given & Co., with the understanding that the United States would pay them therefor \$500 per month, with the privilege of purchasing the same from them at \$8,000; that the \$8,000 has never been paid; that said boat has been ever since in possession of and used by the United States, and these respondents supposed at a monthly rent of \$500, as aforesaid, which they assented to receive, &c."

Although the answer containing the above extract was made by Dickson A. Given, Henry F. Given, D. Watts, and Adam D. Stewart, all of whom verified the same under oath, said Adam D. Stewart having been sworn to the same on the 28th day of January, 1863, before Charles Nettleton, a notary public for the State of New York, on the very same day he, Adam D. Stewart, is sworn before the same notary to a separate supplemental answer of his own, which was filed in the case, in which the following appears:

"And the said Adam D. Stewart now comes and makes further answer to the libel and amended libel, and says that he has never in any way consented to the arrangement alleged to have been made between Watts, Given & Co. and Capt. W. J. Kountz, assistant quartermaster United States Army, for the hiring of said boat to the United

States for \$500 per month, or for the selling of the same to the United States for \$8,000; and he expresses his dissent to any such arrangement."

Attached to the answer and claim of Watts, Given & Co., and Adam D. Stewart are the following exhibits:

"OFFICE ASSISTANT QUARTERMASTER,

"Cairo, January 12, 1862.

"GENTLEMEN: You will please deliver to Capt. M. H. Byrne your wharf-boat for government use, and as soon as you can conveniently come down I would be pleased to see you.

"Very respectfully, your obedient servant,

"W. J. KOUNTZ,

"Captain and Assistant Quartermaster.

"Messrs. WATTS, GIVEN & Co.,

"Paducah, Ky."

Also the following receipt:

"Received, Paducah, January 12, 1862, of Watts, Given & Co., their wharf-boat, in good condition, as per order above of W. J. Kountz.

"M. H. BYRNE."

Also the following certificate:

"I certify that the within wharf-boat was received from Watts, Given & Co. with the understanding that the government would pay them \$500 per month, with the privilege of buying the boat at \$8,000.

"W. J. KOUNTZ,

"Assistant Quartermaster."

From this record it seems clear that, so far at Watts, Given & Co. were concerned, they were willing, on the 15th day of January, 1862, to sell the boat in controversy for \$8,000. It is clearly evident that this "arrangement" was for the whole boat, as their answer and exhibits attached clearly show such to have been the fact. It seems, however, that the government did not pay either the \$8,000 or the stipulated rent, and finally (the government continuing to use the boat), separate bills were presented to the Quartermaster's Department by Watts, Given & Co. and David D. Stewart, covering in each case a claim both for back rent and for the value of their interests, respectively, in the boat.

This resulted in the government purchasing, through the Quartermaster's Department, about September 1, 1863, from Watts, Given & Co., their one-third interest in the boat, including all rents for use of same from September 6, 1861, to that date, for the sum of \$6,000.

Just what proportion of this amount was considered rent and what amount the value of their interest in the boat, does not appear. Adam D. Stewart, although disavowing in his answer the arrangement for \$500 per month rent, presented his bill to the Department as follows:

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| "For $\frac{1}{3}$ rent of boat from September 6, 1861, to 19th February, 1863, being 17 months and 13 days, @ \$500 per month for whole rent of said boat..... | \$2,905 53 |
| "For $\frac{1}{3}$ of said wharf-boat owned by Mr. Stewart, valued at | 5,000 00 |

| | |
|--------------|-----------|
| "Total | 7,905 53" |
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This account, it appears, was, after sundry conflicting recommendations of various officers connected with the War Department, finally approved, as stated, in April, 1866. Aside from these allowances by the War Department to Watts, Given & Co. and Adam D. Stewart, there is no evidence in the case bearing upon the question as to the size, capacity, or value of said wharf-boat; and your committee cannot, after a careful inspection of all the papers in the case, but come to the conclusion that the amounts finally awarded Watts, Given & Co. and Adam D. Stewart for their respective interests in said boat were in excess of the real value of such interests. Judging from all the testimony presented, it is not believed by the committee that \$8,000 is an underestimate of the value of said wharf-boat, its apparel, furniture, and tackle, at the time of condemnation; especially do we not feel authorized in placing any higher estimate in the absence of all proof to the contrary, save and except the allowances made by the government afterward to other part owners therein. Estimating the whole value of the boat then at \$8,000, the value of the one-third interest condemned would be \$2,666.66; the one-half of which, less the costs and expenses of forfeiture, the claimant is equitably entitled to as informer. This one-half is \$1,333.33.

There is nothing in evidence to show the amount of costs and expenses incurred by the government in declaring forfeiture; they could not, however, judging from the voluminous record, have been less than \$333. Your committee, therefore, find that claimant is entitled to \$1,000, and they report the accompanying bill and recommend its passage.

From which it will be seen that on January 12, 1862, said boat was needed by the United States Government and taken possession of and received for, accompanied by the following certificate:

"I certify that the within wharf-boat was rented from Watts, Given & Co. with the understanding that the government would pay them \$500 per month, with the privilege of buying the boat at \$8,000.

"W. J. KOUNTZ,
"Assistant Quartermaster."

Also from said report we find that said boat was seized by United States marshals upon a libel proceeding July 5, 1862.

Your committee are unable to see how the boat could be used for insurrectionary purposes whilst it was in the use and possession of the United States Government.

Again, the decree of confiscation was never carried into effect; the property was never sold; the claimant, the informant, was only entitled to his share of proceeds of sale.

The government must have abandoned the sale of the property for some good reason.

Your committee do not think the claimant is entitled to anything, and accordingly recommend an indefinite postponement of the bill.